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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

LYZA COREEN JOHNSEN,

Defendant and Appellant.

2d Crim. No. B233378
(Super. Ct. No. F444344)
(San Luis Obispo County)

Lyza Coreen Johnsen is a con artist who used her legal services business to bilk unsuspecting clients, employees and at least one charity out of thousands of dollars. After she pleaded no contest to two counts of grand theft (Pen. Code, § 487, subd. (a))¹, and two counts of writing a check with insufficient funds (§ 476a, subd. (a)), the trial court sentenced appellant to four years in state prison and ordered her to pay direct victim restitution to former client Brian Stacy (\$52,850), former employees Lisa Sanders (\$1,525.20) and Randy Myers (\$55,636.30), and a charity, Family Care Network (\$4,545). She now contends the trial court abused its discretion in making the restitution orders to Stacy and Myers because it did not clearly explain how it calculated Stacy's award and because it awarded restitution for losses that were not directly or proximately caused by her criminal conduct. Respondent requests that we modify the judgment to

¹ All statutory references are to the Penal Code unless otherwise stated.

impose mandatory criminal conviction assessments (Gov. Code, §70373), and court security fees. (§ 1465.8.) We modify the judgment as requested and, as modified, affirm.

Facts

Brian Stacy had what he believed to be a valuable medical malpractice claim. Because he did not have a lawyer, he drafted a complaint himself and hired appellant to serve it for him. Over the next three months, appellant convinced Stacy that she had retained a lawyer, a nurse and a paralegal, all of whom were working to review his medical files, correct errors in his complaint and respond to pending discovery requests. Meanwhile, appellant urged Stacy, a commercial fisherman, to stay in town rather than go to sea, so that he would be available to respond quickly to the settlement offer the defendants were sure to make at any moment. Of course, Stacy never received a settlement offer. Instead, he received repeated demands from appellant for more money. Stacy eventually paid her \$22,000, but the services appellant described were never completed. He learned instead that appellant had fabricated everything she told him. The attorney she mentioned had never heard of Stacy or agreed to represent him; the nurse was appellant's girlfriend and had done no work on his case; the paralegal did not exist.

At the restitution hearing, Stacy sought an award of direct victim restitution for the \$22,000 he paid appellant and for \$25,000 in lost wages. He provided the probation department with evidence that, at appellant's urging, he declined an opportunity to participate in a paid research program and stayed in port during a record-breaking commercial salmon fishing season. According to Stacy, the research program would have paid him about \$60,000 and his peers who went fishing earned as much as \$40,000 during the season.

Appellant hired Randy Myers to develop a software application and handle information technology matters for her business. His salary was to be \$10,000 per month and he was to be paid twice a month. Myers started working for appellant on August 1, 2009, and stopped in January 2010. He never received a valid paycheck. Appellant gave him checks, but either they were returned for insufficient funds or appellant stopped

payment on them. When confronted, appellant would take back the "bad" check, write another for a smaller amount, and promise to make up the difference later. Even these replacement checks bounced. She also convinced Myers to "loan" her \$7,820 by claiming that she would go to jail and lose her license if she did not pay certain bills. Myers explained that he made the loans and continued working for appellant because he believed the business would surely fail if he left, and then he would have no hope of recovering any of the money due to him.

In making its restitution orders, the trial court noted that it was relying on the documents Stacy submitted to the probation department and his testimony at the hearing. It found that Stacy "was just strung along by [appellant] financially and emotionally . . . [,]" and that the lost income he claimed "is related directly to the crimes that [appellant] committed against him" The trial court also relied on the documents Myers submitted to the probation department to determine the amount of restitution to which he was entitled.

Discussion

Award of Direct Victim Restitution

Section 1202.4(a)(1) declares: "It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime." When a victim "has suffered economic loss as a result of the defendant's conduct," the court orders direct restitution in an amount "that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct[.]" (§ 1202.4, subd. (f)(3).) In addition to the value of the stolen property, the restitution order may include "Wages or profits lost due to injury incurred by the victim" (§ 1202.4, subd. (f)(3)(D).)

We review the trial court's order for abuse of discretion. "Under this standard, while a trial court has broad discretion to choose a method for calculating the amount of restitution, it must employ a method that is rationally designed to determine the surviving victim's economic loss. To facilitate appellate review . . . the trial court

must take care to make a record of the restitution hearing, analyze the evidence presented, and make a clear statement of the calculation method used and how that method justifies the amount ordered." (*People v. Giordano* (2007) 42 Cal.4th 644, 663-664.)

The trial court has broad discretion in determining the kind of information on which it will rely in awarding restitution. (*People v. Hove* (1999) 76 Cal.App.4th 1266, 1275.) It may, for example, rely on information contained in a probation report or a victim's statement of loss to make an appropriate restitution order. (*People v. Foster* (1993) 14 Cal.App.4th 939, 947.) The victim's statement of loss is prima facie evidence of the amount of that loss. Once the victim describes his or her loss on the record, "this showing establishes the amount of restitution the victim is entitled to receive, unless challenged by the defendant. In that event, the burden shifts to the defendant to show " the portion of the loss that is not recoverable. (*People v. Fulton* (2003) 109 Cal.App.4th 876, 886.)

In this case, both Stacy and Myers submitted statements of loss documenting the amounts they paid directly to appellant and their claimed lost income. Stacy, for example, documented the amounts he paid for appellant's "services," and explained that he followed her advice in turning down other, lucrative work. The trial court awarded Stacy the entire amount of his claimed loss and \$25,000 in lost income. In doing so, it credited Stacy's statements regarding his earning potential and rejected the argument, made by defendant's trial counsel, that Stacy was inflating his losses. Because the trial court based its restitution order on the victim's statement of loss, the order was not an abuse of discretion.

Appellant contends the trial court abused its discretion in awarding Myers restitution for amounts he loaned to her and for income lost when he turned down work from other clients. She contends these losses were not directly or proximately caused by her criminal conduct in writing bad payroll checks to Myers because Myers voluntarily chose to continue working for appellant and loaning her money even after he received the bad checks. We are not persuaded. Myers documented the amount of money he was owed in wages, the amount he loaned to appellant and his lost income. He explained that

he continued to work for appellant and loan her money because he believed that, if he did not, her business would fail and he would never be repaid. The trial court credited that explanation. Because appellant did not meet her burden to show that Myers' claim exceeded his actual injury, the trial court did not abuse its discretion in awarding him the full amount of his claim.

Appellant further contends the trial court erred by awarding restitution for these losses because they do not relate to dismissed charges but instead to conduct for which she was never criminally charged. As a general rule, "when a defendant is sentenced to state prison, section 1202.4 limits restitution to losses caused by the criminal conduct for which the defendant was convicted." (*People v. Lai* (2006) 138 Cal.App.4th 1227, 1249.) Here, however, appellant's guilty plea included a *Harvey* waiver pursuant to which she expressly agreed to pay restitution "even for counts that are being dismissed." (*People v. Harvey* (1979) 25 Cal.3d 754.) The charge on which appellant was convicted and the dismissed counts all relate to the same course of criminal conduct. According to Myers' statement, the loans and lost income were also integrally related to the same scheme. Appellant convinced Myers that he would lose all hope of recovering any portion of the money owed to him if he did not help appellant keep her business open by loaning her money to pay bills and by continuing to work for her. The trial court's finding that these losses are within the scope of the dismissed charges was not an abuse of discretion. (*People v. Munoz* (2007) 155 Cal.App.4th 160, 166-167.)

Mandatory Assessments and Fees

Appellant was sentenced on December 13, 2010. The trial court did not impose any assessments pursuant to Government Code section 70373 or fees pursuant to section 1465.8, subdivision (a). These assessments and fees are mandatory. (*People v. Woods* (2010) 191 Cal.App.4th 269, 272.) Where the trial court fails to impose the fees and assessments, this Court may impose them and modify the judgment accordingly. (*People v. Crabtree* (2009) 169 Cal.App.4th 1293, 1327-1328.)

Appellant was convicted of two felonies and two misdemeanors. The Government Code provides that an assessment "shall be imposed in the amount of thirty

dollars (\$30) for each misdemeanor or felony" conviction. (Gov. Code, § 70373, subd. (a)(1).) Section 1465.8 requires that a fee of \$40 be imposed on "each and every conviction for a criminal offense." Accordingly, we modify the judgment to impose assessments pursuant to Government Code section 70373, subdivision (a)(1) in the amount of \$120 and fees pursuant to section 1465.8, subdivision (a) in the amount of \$160.

The Clerk of the Superior Court shall prepare and forward to the Department of Corrections an amended abstract of judgment reflecting the assessments and fees imposed above. The judgment, as so modified, is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Michael L. Duffy, Judge
Superior Court County of San Luis Obispo

Mark R. Feeser, under appointment by the Court of Appeal, for Defendant and Appellant.

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